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EXHIBIT

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY ANGELO DEGENES,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION, et al.

Defendants.

Civil Action No.: 2:11-cv-00916-JFC

**SECOND DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), formerly at Federal Bureau of Investigation Headquarters ("FBIHQ") in Washington, D.C., and currently located in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 277 employees who staff a total of ten (10) FBIHQ units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to

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requests for access to FBI records and information pursuant to the FOIA, amended by the Open Government Act of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The FBI is an agency of the United States Government within the Department of Justice. The FBI's mission is to protect and defend the United States against terrorist and foreign intelligence threats, to hold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's response to the FOIA/Privacy Act request of plaintiff, Anthony Angelo DeGenes, who seeks access to FBI records pertaining to himself.

(4) This second declaration supplements, and hereby incorporates, my prior declaration submitted in this case. The "[First] Hardy Declaration," dated November 14, 2011, (hereinafter "First Hardy Declaration"), provided the Court and plaintiff with an explanation of plaintiff's failure to exhaust his administrative remedies as the result of his neglecting to file an administrative appeal with the Office of Information Policy (OIP) before filing the present suit. I

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have reviewed and am familiar with the arguments plaintiff makes in his Second Amended Complaint which was filed February 24, 2012 ("Second Amended Complaint"). This declaration is being submitted to further elaborate on RIDS's search policy and procedures as they apply in this case.

#### EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM

(5) The Central Records System ("CRS"), which RIDS utilizes to conduct searches in response to FOIA and Privacy Act requests, enables the FBI to maintain all information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. This system consists of a numerical sequence of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity, or foreign intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ. Records that are pertinent to specific field offices of the FBI are maintained in those field offices. Although the CRS is primarily designed to serve as an investigative tool, the FBI utilizes the CRS to conduct searches that are likely to yield documents responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System ("ACS").

(6) Access to the CRS is obtained through the General Indices, which are arranged in alphabetical order. The General Indices consist of index cards on various subject matters that are searched either manually or through the automated indices. The entries in the General Indices fall into two categories:

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(a) A "main" entry -- A "main" entry, or "main" file, carries the name corresponding with a subject of a file contained in the CRS.

(b) A "reference" entry -- A "reference" entry, sometimes called a "cross-reference," is generally only a mere mention or reference to an individual, organization, or other subject matter, contained in a document located in another "main" file on a different subject matter.

(7) Access to the CRS files in FBI field offices is also obtained through the General Indices (automated and manual), which are likewise arranged in alphabetical order, and consist of an index on various subjects, including the names of individuals and organizations. Searches made in the General Indices to locate records concerning a particular subject, such as Anthony Angelo DeGenes are made by searching the subject requested in the index. FBI field offices have automated indexing functions.

(8) On or about October 16, 1995, the ACS system was implemented for all field offices, Legal Attaches ("Legats"), and FBIHQ in order to consolidate portions of the CRS that were previously automated. Because the CRS cannot electronically query the case files for data, such as an individual's name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. Over 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(9) ACS consists of three integrated, yet separately functional, automated applications that support case management functions for all FBI investigative and administrative cases:

(a) Investigative Case Management ("ICM") -- ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads. The Office of Origin ("OO"), which sets leads

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for itself and other field offices, as needed, opens a case. The field offices that receive leads from the OO are referred to as Lead Offices ("LOs") – formerly known as Auxiliary Offices. When a case is opened, it is assigned a Universal Case File Number ("UCFN"), which is utilized by all FBI field offices, Legats, and FBIHQ that are conducting or assisting in the investigation. Using a fictitious file number "111-HQ-12345" as an example, an explanation of the UCFN is as follows: "111" indicates the classification for the specific type of investigation; "HQ" is the abbreviated form used for the OO of the investigation, which in this case is FBIHQ; and "12345" denotes the individual case file number for the particular investigation.

(b) Electronic Case File ("ECF") – ECF serves as the central electronic repository for the FBI's official text-based documents. ECF supports the universal serial concept, in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index ("UNI") – UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 113.4 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(10) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent ("SA") assigned to work on the investigation, the Supervisory SA ("SSA") in the field office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a "key" (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be

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effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter or individual, i.e., Anthony Angelo DeGenes.

#### EXPLANATION OF THE ELECTRONIC SURVEILLANCE ("ELSUR") INDICES

(11) The Electronic Surveillance ("ELSUR") indices are used to maintain information on a subject whose electronic and/or voice communications have been intercepted as the result of a consensual electronic surveillance or a court-ordered (and/or sought) electronic surveillance conducted by the FBI. The ELSUR indices date back to January 1, 1960. On or about October 9, 1991, the ELSUR indices were automated. Since that time, FBIHQ and all FBI field offices have electronically generated, maintained, modified and accessed all ELSUR records.

(12) The ELSUR indices are a separate system of records from the CRS. Prior to automation, the ELSUR indices consisted of index cards on individuals who had been the subject of a microphone or telephone surveillance by the FBI from 1960. As stated above, the previous manual index card system was converted to an automated system on or about October 9, 1991. These indices include individuals who were the (a) targets of direct surveillance, (b) participants in monitored conversations, and (c) owners, lessees, or licensors of the premises where the FBI conducted electronic surveillance. In addition to the names of individuals in the above categories, the cards in the ELSUR index contain the date the voice was monitored, a source number to identify the individual on whom the surveillance was installed, and the location of the FBI field office that conducted the monitoring.

(13) The ELSUR indices are published as a separate records system in the Federal

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Register because not all names contained in the ELSUR index can be retrieved through the General Index and CRS. See 52 Fed. Reg. 8482 (1992).

(14) The FBI field offices that have conducted electronic surveillance at any time from 1960 to the present also maintain ELSUR indices. Since January 1, 1960, the field offices have been including in their ELSUR indices - and reporting to FBIHQ for inclusion in its index - the names of all persons whose voices have been monitored through a FBI microphone installation or a telephone surveillance. The names of monitored subjects are retrievable through the FBIHQ or local field office ELSUR indices.

(15) Until 1969, FBI field offices were also required to forward the names of all persons mentioned during monitored conversations to FBIHQ for inclusion in the FBIHQ ELSUR index. Although FBIHQ discontinued this requirement in 1969, some field offices still include the names of individuals mentioned in monitored conversations in the field office's ELSUR index. However, the names of such persons cannot be retrieved through the FBIHQ ELSUR index.

#### SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF'S REQUEST

(16) The FBI's current policy is to search for and identify only "main" files responsive to FOIA/PA requests at the initial administrative stage. In response to plaintiff's Pittsburgh field office request dated June 9, 2011, the FBI conducted an automated search of the CRS using the <sup>CENTRAL RECORDS</sup> SYSTEM search terms, "DeGenes, Anthony, Angelo," and DeGenes, Anthony." A search of the automated indices to the CRS will identify all potentially responsive main files indexed to a subject, utilizing a six-way phonetic breakdown of the name, including any variations of the first or last name that sound like or are spelled differently than the name. In this case, the breakdown could



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include "DeGenes, Anthony, Angelo" "DeGenes, Anthony, A," "DeGenes, A, A," "DeGenes, Anthony," "DeGenes, Angelo," and "DeGenes, A." The FBI was unable to locate any potentially responsive main files as a result of its automated search of the CRS. A search of the Pittsburgh Field Office's manual indices was not conducted because the manual indices were being automated at that time and were not accessible.

*ELECTRONICS SURVEILLANCE INDICES*

(17) Finally, the FBI searched the ELSUR indices on June 15, 2011 using the following variations of plaintiff's name: "DeGenes, Anthony, Angelo" and "DeGenes, Anthony." The FBI located no responsive records as a result of this search.

*RECORDS INFORMATION SECTION*

(18) RIDS conducted a subsequent search of the CRS on October 4, 2011, at the commencement of litigation, to confirm the result of its earlier search for main files and to locate any cross-references potentially responsive to plaintiff's requests. RIDS confirmed the results of its earlier search for main files and did not locate any reference files.<sup>1</sup>

(19) On October 4, 2011, RIDS also conducted a search of the Pittsburgh Field Office's manual indices -- using the last name "DeGenes" -- and did not locate any records.<sup>2</sup>

### CONCLUSION

(20) The FBI has conducted multiple searches reasonably likely to locate records responsive to plaintiff's FOIA/PA request, but has located no responsive records in its main files, cross-references, or ELSUR indices.

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<sup>1</sup> A cross-reference is defined as a mere mention of -- or passing reference to -- the subject of the request in files relating to other individuals, organizations, events, or activities.

<sup>2</sup> The Pittsburgh Field Office's manual indices were not accessible at the time of plaintiff's request in June 2011. Since commencement of this litigation, the Pittsburgh's manual indices have been automated, and are now accessible and searchable electronically.

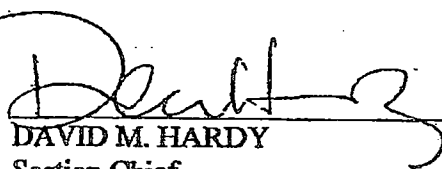


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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
and correct.

Executed this 26<sup>th</sup> day of March, 2012.

  
DAVID M. HARDY  
Section Chief  
Records/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia